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Title 409 - NEBRASKA DEPARTMENT OF ROADS - CONSTRUCTION DIVISION

Chapter 2 - Contracts, Proposal Forms, Ratings, and Qualifications of Contractors Proposing to Bid on State Highway Work - Metric System Measurements (Continued)

003 CURRENT RATING AND PROPOSAL FORMS FOR CONTRACTORS PROPOSING TO BID ON STATE HIGHWAY CONTRACTS

003.01 CURRENT RATING

003.01A Each person desiring to bid on work for which prequalification of bidders is required shall submit a request for proposal forms and with such request shall submit, on forms provided by the Department, a complete report of all work then under contract, including subcontracts, and the amount of work not completed on all such contracts. A current qualification based on this statement and the Contractor's "maximum qualification" will be established by the Department taking into account the rate of progress which is being made in performing the uncompleted work, the requirements for the performance of the work for which the Contractor desires to bid, and any other pertinent information that is available to the Department. This current qualification shall be the "current rating" which determines the amount of work for which any person is qualified at the particular letting and for which he/she may be awarded a contract or contracts, except that the Department may use a tolerance of not more than twenty-five percent of a bidder's current rating and award the contract or contracts in a total amount which does not exceed by more than twenty-five percent the current rating which is established by the Department.

003.02 PROPOSAL FORMS

003.02A Proposal forms for work for which prequalification of bidders is required will be issued only to those qualified to bid on each contract. A person will not be considered as qualified for any particular letting if his/her qualification rating will expire on or before the date of the letting.

003.02B Any person submitting two or more proposals in a total amount exceeding his/her current qualification by more than twenty-five percent shall submit the same subject to the limitations of his/her current rating plus a tolerance of twenty-five percent. Nothing in these rules and regulations shall be construed as depriving the Department of the right to reject any bid where, in the opinion of the Department, other circumstances and developments have changed the qualification or responsibility of the bidder.

003.02C If the qualification rating of the low bidder expires before the award of a contract, such contract will not be awarded until the qualification rating of the low bidder has been renewed.

003.02D Proposal forms for work for which prequalification of bidders is required will be labeled with the name of the bidder to whom they are issued and shall not be transferable. Any proposal which is submitted by a bidder other than the one to whom the proposal form was issued shall be void.

003.02E Proposal forms for work for which prequalification of bidders is required may be issued by the Department at its discretion for information only. Such proposal forms shall not be used for bidding and shall be stamped with the words "For information only, not to be used for bidding." Bids submitted on such forms shall be void and not considered.

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003.02F Proposal forms will not be issued to any bidder later than 5:00 o'clock P.M. of the day preceding the letting.

003.02G A proposal form for any contract for which prequalification of bidders is required may be issued, at the discretion of the Department, to two or more qualified bidders jointly if the classes of work for which the prospective bidders are qualified to perform satisfy, in the aggregate, the qualification requirements for the particular contract. Two or more qualified bidders may not bid jointly to perform any contract for which prequalification of bidders is required unless a proposal form is issued by the Department to those bidders jointly for that purpose.

003.03 CONTENTS OF PROPOSAL PACKAGE

003.03A The Department will prepare a Proposal Package for each qualified Contractor desiring to bid. The Package contains:

003.03A1 All forms the bidder must submit.

003.03A2 Those applicable Special Provisions that amend the *Nebraska Standard Specifications for Highway Construction*.

003.03A3 Other Special Provisions that uniquely apply to the project.

003.03A4 A schedule of unit price or lump sum bid items.

003.03A5 A Proposal Guarantee Bid Bond.

003.03A6 An envelope with separate pockets for the proposal and bid bond respectively.

003.03A7 A Notarized Proposal Signature Page.

003.03B The only bids the Department will accept are bidder completed Department Proposal Packages. The Package must be submitted in the provided envelope.

003.03C Proposal forms will state the location and description of the contemplated work and will show the estimate of the various quantities and kinds of work to be performed and/or materials to be furnished. They will include the time in which the work must be completed. Also shown will be the date, time, and place of bid openings.

003.04 INTERPRETATION OF QUANTITIES IN PROPOSAL FORMS

003.04A The quantities listed in the proposal forms are to be considered as approximate, unless otherwise provided, and are to be used for the comparison of bids. Payments to the Contractor will be

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made for the actual quantities or Plan quantities, if specified, of work performed or materials furnished in accordance with the Plans and Specifications. It is understood that the quantities of work to be done and materials to be furnished may each be increased, diminished, or omitted as hereinafter provided without in any way invalidating the unit bid prices, except as provided in Subsection 104.02 of the current edition of the State of Nebraska, Department of Roads', *Standard Specifications for Highway Construction*.

003.05 EXAMINATION OF PLANS, SPECIFICATIONS, SPECIAL PROVISIONS, AND SITE OF WORK

003.05A The Department will provide detailed Plans and *Specifications*. The bidder, before submitting a proposal, shall carefully examine:

- 003.05A1 The site of the proposed work.
- 003.05A2 The proposal.
- 003.05A3 The Plans.
- 003.05A4 The *Specifications*.
- 003.05A5 The Supplemental Specifications.
- 003.05A6 The Special Provisions.
- 003.05A7 The Contract forms.
- 003.05A8 The permit conditions.

003.05B The submission of a bid is considered conclusive evidence that the bidder made the examinations required in Section 003.05A above and that the bidder is satisfied with and understands the conditions to be encountered in performing the work and other requirements in the Contract.

003.06 FEDERALLY FUNDED CONTRACTS - EQUAL EMPLOYMENT OPPORTUNITY

003.06A Each Contractor and Subcontractor submitting a Proposal must certify that he/she has or has not participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Federal Executive Order 11246, and that he/she has or has not filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity all reports due under the applicable filing requirements.

003.06B The certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7 (b)(1)), and must be submitted by bidders and proposed Subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts or subcontracts of \$10,000 or less are exempt.)

003.06C Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations. Standard Form 100 (EEO-1) must be filed by:

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003.06C1 Employers covered by Title VII of the Civil Rights Act of 1964 and employers covered by Federal Executive Order 11246 who have 100 or more employees in the payroll period for which they are reporting, normally any payroll period in December, January, or February preceding the filing of the report.

003.06C2 If Standard Form 100 (EEO-1) was not filed due to the Contractor not meeting the 100 or more employee requirement, it is proper for the Contractor to state that he/she has submitted all required compliance reports due.

003.06D Proposed prime Contractors and Subcontractors who have participated in a previous contract or subcontract subject to the Federal Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7 (b)(1) prevents the award of contracts and subcontracts unless such Contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

003.07 PREPARATION OF PROPOSAL

003.07A All bidders shall submit their Department furnished proposal package.

003.07B The bidder must state the unit prices for each item of work contemplated.

003.07C The blank spaces in the proposal must be filled in correctly, in ink or typed, for each and every item necessary to submit a complete bid.

003.07D If the unit price is left blank and the quantity of the item is one and an amount is shown in the "Bid Amount" column, then the amount in the "Bid Amount" column will be considered the unit price.

003.07E If the bidder enters an amount in the "Unit Price" column when "Lump" is shown in that column, the "Unit Price" shall govern in the extension of that item.

003.07F If both columns are left blank, the proposal will be considered incomplete and rejected.

003.07G If the unit price is indicated with a line, the unit price will be considered free no matter what amount is shown in the "Total Bid" column.

003.07H If the unit price is left blank and the quantity of the item is greater than one, the proposal is incomplete and the bid is rejected.

003.07I When the proposal schedule is divided into groups, a price shall be submitted on each and every item of work necessary to submit a complete bid for the group on which the bidder wishes to bid.

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003.07J The bidder shall also show the product of the respective unit prices and quantities in the column provided for that purpose and the total amount for each group and combination of groups, as indicated in the proposal form, necessary for a complete bid for the work on which the bidder wishes to bid.

003.07K Failure of the bidder to properly sign the proposal shall make the proposal incomplete, and the bid will be rejected.

003.07L Each bidder, in signing and notarizing the signature page by or on behalf of the person, firm, association, or corporation submitting the bid, certifies that:

003.07L1 Such person, firm, association, or corporation has not either directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid.

003.07L2 All equipment has been assessed for the current year.

003.07L3 The company is operating under a drug-free workplace policy, a copy of which being on file with the Department.

003.07L4 A bond for the contract amount will be furnished.

003.07L5 Reports have been filed regarding Equal Opportunity participation (Federally funded projects only).

003.07L6 Disadvantaged Business Enterprises (DBE) goals on designated Federally funded projects will be achieved or "good faith" documentation provided.

003.07M Failure to submit a signed and notarized proposal signature page as part of the bid proposal package will make the bid nonresponsive. False statements in any of the above certifications will constitute perjury.

003.08 ELECTRONIC BID SYSTEM (EBS) (OPTIONAL PROCEDURE)

003.08A GENERAL PROVISIONS

003.08A1 Bidders who wish to prepare and submit their bids using an electronic process must use the Electronic Bid System (EBS) furnished by the Department and must subscribe to the CompuServe State D.O.T. Forum. The Department will furnish these bidders with the necessary EBS software to install on their computers through the Nebraska Department of Roads' Forum on CompuServe. The *Bid Managers User's Guide* will be provided upon request.

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003.08A2 Bidders using EBS must have an Advanced Payment Account with the Nebraska Department of Roads. Bidders using EBS to prepare and print their bid item schedule must also submit an electronic diskette containing those bid(s). If a bidder fails to submit an electronic diskette containing their bids, the Advanced Payment Account will be assessed a fee for each bid missing from the diskette. All bids for a single letting shall be submitted on one 88.9 mm diskette.

003.08A3 The Department shall provide requesting bidders the following:

- 003.08A3a The Bid Package(s).
- 003.08A3b The Bid Bond Form(s).
- 003.08A3c The Bid Envelope(s).
- 003.08A3d EBS Software (Through CompuServe).
- 003.08A3e EBS Bid Managers Guide (Through CompuServe).

003.08A4 The bid items for all projects in a letting will be distributed through the CompuServe State D.O.T. Forum.

003.08A5 Electronic bids must comply with all Plans, Special Provisions, the *Standard Specifications for Highway Construction*, Supplemental Specifications to the *Standard Specifications for Highway Construction*, and the Rules and Regulations of the Nebraska Department of Roads regarding bid preparation and bid submittal.

003.08A5a Exceptions:

003.08A5a(1) Items of work for which the bidder intends to make no charge to the Department must have a zero (0) unit price entered.

003.08A5a(2) Blank unit prices will be considered an invalid bid.

003.08A5a(3) EXCEPTION: However, for alternate groups the Contractor is not bidding, DO NOT ENTER ZEROS. Leave these items blank.

003.08B ASSEMBLY OF BID PROPOSAL

003.08B1 Continuously-rolled printer paper must be separated into individual pages before it is inserted into the Bid Envelope.

003.08B2 The electronic diskette shall be submitted in a separate sealed envelope marked with the bidder's name and all call order numbers for which electronic bids are submitted. The Bid Proposal(s) including the computer-generated item sheets and Bid Bonds shall be submitted in their individual Bid Envelopes.

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003.08C FORMAT OF EBS BIDS AND OTHER ELECTRONIC BID REQUIREMENTS

003.08C1 The size of computer-generated bid item pages shall be 216 mm horizontal by 279 mm vertical.

003.08C2 Paper and printers used for each computer-generated bid item page shall be of a quality to maintain clear and concise images and to withstand frequent handling.

003.08C3 All computer-generated characters in the electronic bid must be clearly legible.

003.08D DISCREPANCY BETWEEN INFORMATION ON THE DISKETTE AND BID ITEM PAGES SUBMITTED

003.08D1 In the event there is a discrepancy between the information submitted on the diskette and the bid item pages submitted with the proposal, the figures on the bid item pages will prevail.

003.08D2 If the bidder completes and submits both the bid item sheets in the original bid proposal package and the EBS-generated bid item sheets and there is a discrepancy between them, the figures contained in the original bid proposal will prevail.

003.08E REJECTION OF EBS BIDS BY THE DEPARTMENT

Any of the following will be considered cause to reject an electronic bid.

003.08E1 Failure to submit all computer-generated bid item pages.

003.08E2 Failure to sign the Bid Proposal and the computer-generated signature page, as well as all other forms requiring signatures.

003.08E3 Failure to complete each line of the computer-generated pages.

003.09 TIES AND LIMITATIONS

003.09A Combination bids for two or more groups in any proposal may be submitted, except that any bridge group may be bid in combination only with a culvert group or another bridge group and that the culvert groups may be bid in combination with one or more bridge groups only when not bid in combination with other groups in the same proposal. The classification of two or more groups tied together by the Department shall be as stated in the "Notice to Contractors," and shall be considered as a group of that classification. A separate and complete bid for each group of items shall be included in the combination bid. If a bidder desires to tie his/her bid for two or more groups on any proposal, such tie shall be clearly indicated, in the space provided, by writing in group numbers and by striking out the words which do not apply. The bidder shall not indicate a tie in words other than those shown and shall not alter or add to the words shown in order to provide other than one tie or condition. If a tie is indicated

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by writing in group numbers without striking out the words which do not apply, it will be interpreted that a tie was not intended and the bid will be considered on that basis, regardless of where the group numbers are placed in space provided. Underlining words or any other marking instead of striking out the words which do not apply will not be considered as indicating a tie. The bidder shall not insert a tie or condition in any other place in the proposal except in the space provided on the front cover of the proposal.

003.09B A proposal shall not be tied to any other proposal except as may be indicated on the front cover of the proposal form. If the bidder desires to tie his/her bid to his/her bid on any or all of the other proposals which may be indicated on the proposal form, such tie shall be clearly indicated in the space provided by striking out the words "is not tied" and the numbers which do not apply. The bidder shall not indicate a tie in words other than those shown. If the bidder indicates a tie between any proposal and one or more other proposals and the groups in the proposal for which the bid is submitted are not tied together by either the Department or the bidder, it will be assumed that the bids for the comparable individual groups only on the two or more proposals are tied.

003.09C If the bidder does not designate a preference in the space provided, it will be assumed that he/she does not desire to tie his/her bid to any of the proposals listed therein; and the bid will be considered on that basis. Underlining words, or any other marking, instead of striking out the words which do not apply will not be considered as indicating a tie. The bidder shall not insert a tie in any other place in his/her proposal except in the space provided on the front cover of the proposal form.

003.09D A Contractor may bid on all or any part of the work included in any one letting and for which he/she is prequalified, even though the total of all bids submitted exceeds his/her current qualification rating. In the event a bidder submits the low bids for more work than the amount of his/her qualification rating, contracts will not be awarded to him/her in excess of his/her current qualification rating plus twenty-five percent.

003.09E The Engineer reserves the right to make awards that will be in the best interest of the State, and any comment in a proposal limiting or qualifying this reserved right shall constitute an irregular bid. However, the bidder may specify one or more of the following:

003.09E1 The maximum monetary value of awards that will be accepted.

003.09E2 The total number of contracts that will be accepted.

003.09E3 The number of contracts of any particular class or classes of work that will be accepted.

003.09F Such limitations must be indicated in the space provided on the front cover of the proposal form. Any limitation in the number of contracts of any particular class or classes of work that the bidder will accept will be considered as applying only to the class or classes of work mentioned.

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003.09G The bidder shall not make a conditional deduction or reduction in any unit price in any proposal form.

003.10 IRREGULAR PROPOSALS

003.10A Any tie, statement, qualification, or limitation made by the bidder in violation of, or not permitted by, Section 003.09 will cause the bid to be considered void.

003.10B Proposals may be rejected if they show any alterations of forms, additions not called for, conditional bids, alternate bids, incomplete bids, erasures, or irregularities of any kind. Each bidder shall make an honest attempt to show correct extensions and totals in his/her bid. If, in the opinion of the Engineer, such an attempt is not made, such proposals may be rejected.

003.10C In the event of a discrepancy between unit bid prices, extensions, and/or totals, the unit price shall govern.

003.10D Special provisions or documents bound with or attached to the proposal form shall be considered a part thereof and shall not be detached or altered. Any proposal not complying with this requirement shall be considered void.

003.11 PROPOSAL GUARANTY

Each proposal shall be accompanied by a Bid Bond made payable to the Department of Roads in an amount equal to at least five (5) percent of the amount bid. The Bid Bond must be executed on the Department of Roads' Bid Bond form, copies of which may be obtained from the Department. Bid Bonds must be executed by corporations authorized to contract as surety in the State of Nebraska.

003.12 DELIVERY OF PROPOSALS

The proposal and Bid Bond shall be placed in separate sealed envelopes, attached to each other, furnished by the Department. The envelope containing the proposal shall be marked by the bidder to indicate its contents. Proposals shall be received until the date and hour set forth for the opening and must be, by that time, delivered to the place indicated in the "Notice to Contractors."

003.13 WITHDRAWAL OF PROPOSALS

003.13A A bidder may withdraw an unopened proposal at any time prior to the bid opening time specified in the "Notice to Contractors."

003.13B To withdraw a proposal, the bidder shall provide written notice (letter, telegram, or FAX) to the Department's Contracting Office prior to the time established for the bid opening.

003.13C The bidder may resubmit withdrawn proposals.

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003.13D The Department will not accept resubmitted proposals after the bid opening time specified in the "Notice to Contractors."

003.14 PUBLIC OPENING OF PROPOSALS

003.14A Proposals will be opened and read publicly at the time and place indicated in the "Notice to Contractors." Proposals not filed in the envelope provided for that purpose by the Department will not be opened and read. Proposals not accompanied by a Bid Bond filed in the envelope for that purpose will not be opened and read. Errors by the bidder in filing his/her proposal will not be cause for waiving any of the above requirements and will not be the responsibility of the Department.

003.14B The "Total Bid" for each proposal will be read publicly. The group totals and unit prices for individual proposals may be read at the sole discretion of the Department.

003.15 DISQUALIFICATION OF BIDDERS AND DEBARMENT POLICY AND PROCEDURE

003.15A DISQUALIFICATION

Any one or more of the following causes shall be considered as sufficient for the disqualification of a bidder and the rejection of his/her proposal or proposals:

003.15A1 More than one proposal on any class of work on any one project from an individual, a firm or partnership, a corporation, or an association under the same or different names. Reasonable grounds for believing that any bidder is interested in more than one proposal for the work contemplated will cause the rejection of all proposals in which such bidder is interested.

003.15A2 EVIDENCE OF COLLUSION AMONG BIDDERS. Any or all proposals will be rejected if there is reason for believing that collusion exists among the bidders or if the bidder has been found unacceptable to bid due to collusion prior to award of the contract.

003.15A3 Proposals in which the prices are obviously unbalanced.

003.15A4 Proposals which are materially unbalanced. A bid is unbalanced if lump sum prices or unit bid prices do not reflect reasonable actual costs and there is a reasonable doubt that the lowest ultimate cost under the contract will be achieved.

003.15A5 Following conclusive evidence of collusion among bidders, participating bidders in such collusion will receive no recognition as bidders for any future work of the Department until such participants are reinstated as qualified bidders.

003.15A6 Proposals which are accompanied by Bid Bonds on forms other than the Department's form or by a Bid Bond form which is incorrectly completed or is incomplete.

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003.15A7 A proposal in which the affidavit form signature page is incorrectly completed or is incomplete.

003.15B DEBARMENT

003.15B1 The Director-State Engineer may, in his/her sole discretion, debar an individual, a Contractor, or its affiliates from bidding, subcontracting, or supplying materials on Department of Roads' contracts for any illegal activity involving bidding evidenced by any of the following:

003.15B1a Indictment or conviction of a bidding crime; any plea of guilty or nolo contendere to a charge of a bidding crime; any public admission of a bidding crime; any presentation of an unindicted co-conspirator; or any testimony protected by a grant of immunity of any Contractor in any jurisdiction indicating involvement in a bidding crime.

003.15B1b Conviction of any offense indicating a lack of moral or ethical integrity as may reasonably be perceived to relate to or reflect upon the business practices of the bidders.

003.15B1c Debarment by any other State or Federal agency for substantially any of the reasons listed above.

003.15B1d Any other activities of an individual, Contractor, or its affiliates of a serious or compelling nature that are reasonably perceived to relate to their work as a Contractor.

003.15B1e Making materially false statements on a bid proposal.

003.15B2 An individual or a Contractor shall be given a debarment hearing if either so requests before or after debarment. The determination as to whether the debarment hearing will be held before or after debarment shall be at the sole discretion of the Director-State Engineer.

003.15B2a The written request for a debarment hearing must be received by the Director-State Engineer no later than ten days after the receipt of the written notice from the Director-State Engineer. Unless otherwise mutually agreed in writing, the debarment hearing shall be held no later than fourteen days after receipt of the individual's or Contractor's request for a debarment hearing.

003.15B2b DEBARMENT AFTER HEARING. In those situations where the Director-State Engineer decides to hold a debarment hearing prior to deciding whether debarment is proper, he/she shall send written notice to the affected individual, Contractor, or their agents by certified or registered mail stating:

003.15B2b(1) That debarment is being considered.

003.15B2b(2) The general reasons that suggest the debarment.

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003.15B2b(3) That the Contractor will be afforded an opportunity for a debarment hearing if requested.

003.15B2c **DEBARMENT BEFORE HEARING.** In those situations where the Director-State Engineer determines that debarment is appropriate prior to a debarment hearing, he/she shall send written notice to the affected individual, Contractor, or their agents by certified or registered mail stating:

003.15B2c(1) That the Contractor or individual has been debarred.

003.15B2c(2) The general reasons for the debarment.

003.15B2c(3) That the Contractor or individual shall be accorded the opportunity for a debarment hearing if they so request in writing within ten days of the receipt of the written notice of debarment.

003.15B2d If the Contractor or individual notifies the Director-State Engineer that he/she desires a hearing, the debarment hearing will be held no later than fourteen days after receipt of the individual's or Contractor's request unless mutually agreed otherwise in writing. The Director-State Engineer shall determine in writing whether the individual or Contractor will be reinstated.

003.15B3 The Director-State Engineer shall appoint a Hearing Examiner to conduct all debarment hearings. The Hearing Examiner shall make a recommendation to the Director-State Engineer, and such recommendation shall include findings of fact and conclusions of law.

003.15B4 Except as modified by the Rules and Regulations of the Nebraska Department of Roads, debarment hearings before the Hearing Examiner shall conform to the Code of Civil Procedure applicable to the District Courts of the State. Practice before the Hearing Examiner shall be governed by Department of Roads', Rules and Regulations, Title 407, Chapter 1.

003.15B5 Debarment shall be for a period of thirty-six months or, in the case of a reciprocal debarment as provided for under Subsection 003.15B1c, the term of the debarment shall be for the same period as the debarment imposed by the other State or the Federal government.

003.15B6 The Director-State Engineer may suspend a debarment at anytime he/she determines it is in the public interest to do so. Mitigating circumstances may be considered in the decision to lift or suspend a debarment and may include, but shall not be limited to:

003.15B6a The degree of culpability of the debarred individual or Contractor.

003.15B6b Restitution by the debarred individual or Contractor to the State for any perceived overcharges or damages resulting from the actions of the debarred individual or Contractor.

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003.15B6c Cooperation by the debarred individual or Contractor with the State, the United States, and/or any other political governmental subdivision in the investigation of bidding crimes, including a full and complete account of the individual's or Contractor's particular involvement therein.

003.15B6d Disassociation with individuals and firms that have been involved in a bidding crime.

003.15B7 The Director-State Engineer, at his/her discretion, may hold a hearing, no later than fifteen days prior to the last day of the debarment, and require the debarred individual or Contractor to show cause why the debarment should not continue. If the Director-State Engineer, in his/her sole discretion, determines that a debarred individual or Contractor has failed to become a responsible bidder, then the Director-State Engineer may continue the debarment for up to twelve additional months. The same show cause procedures shall continue for each successive extension of the original debarment until such time as the Director-State Engineer has determined that the debarred individual or Contractor meets the criteria of a responsible bidder.

003.15B8 For purposes of debarment, the conduct of a Contractor or an individual shall be fully imputed to:

003.15B8a Business firms with which they are or were associated.

003.15B8b Business firms by whom the individual was or is employed.

003.15B8c Parent or subsidiary companies of the Contractor.

003.15B8d Business firms in which the individual or Contractor has a controlling interest.

003.15B9 Debarment of a Contractor shall in no way affect the obligations of the Contractor to the State for services to the Department of Roads already under contract.

003.15B10 Every Contractor currently qualified by the Department of Roads to bid on its contracts shall have a duty to notify the Director-State Engineer if it, any of its employees, officers, board members, or associates are indicted or convicted of a bidding crime within thirty days of the indictment or conviction. Failure to do so is a serious and compelling offense sufficient to result in debarment.

003.15B11 Every Contractor qualified by the Department of Roads to bid on its contracts shall have a duty to notify the Director-State Engineer if the Contractor, any of its employees, officers, board members, or associates are contacted by any person with the purpose of engaging in any illegal activities in connection with bidding on State highway contracts or contracts involving federal aid. Notice shall include the name of the person making such overture or proposal, the time and place thereof, and the specific nature of the overture or proposal.

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003.15B12 A copy of Sections 003.15 through 003.15B12 of these Rules shall be mailed to each prequalified Contractor and to each Contractor heretofore debarred or suspended.

003.15C PROCEDURES FOR CERTIFICATION REGARDING DEBARMENT

003.15C1 By signing and submitting a proposal, the bidder is providing the certification set out below.

003.15C2 The inability of a person to provide the certification required below will not necessarily result in denial of participation in a contract. The bidder shall submit an explanation of why he/she cannot provide certification. The certification or explanation will be considered in connection with the Department's or agency's determination whether to enter into this transaction. However, failure of the bidder to furnish a certification or an explanation shall disqualify the bid.

003.15C3 The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the bidder knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction, cause prosecution for perjury, bring debarment proceedings, or any combination of the above.

003.15C4 The bidder shall provide immediate written notice to the Department if at any time the bidder learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

003.15C5 The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549. The Department may be contacted for assistance in obtaining a copy of those regulations.

003.15C6 The bidder agrees by submitting this proposal that, should the proposed covered transaction be entered into, he/she shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the Department.

003.15C7 The bidder further agrees by submitting this proposal that he/she will include this Subsection (003.15), without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

003.15C8 A bidder in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction unless he/she knows that the certification is erroneous. A bidder may

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decide the method and frequency by which he/she determines the eligibility of his/her principals.

003.15C9 Except for transactions authorized under Section 003.15C6 of these instructions, if a bidder in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this contract, in addition to other remedies available to the Federal Government, the Department may terminate this contract for cause or default, cause prosecution for perjury, bring debarment proceedings, or any combination of the above.

003.15C10 The bidder swears, to the best of his/her knowledge and belief, that he/she and the principals:

003.15C10a Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or Agency.

003.15C10b Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for:

003.15C10b(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction.

003.15C10b(2) Violation of Federal or State antitrust statutes.

003.15C10b(3) Commission of embezzlement, theft, forgery, bribery, or falsification or destruction of records.

003.15C10b(4) Making false statements.

003.15C10b(5) Receiving stolen property.

003.15C10c Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in Section 003.15C10b of this Regulation.

003.15C10d Have not within a three-year period preceding this proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

003.15C11 Where the bidder is unable to certify to any of the statements in the certification, an explanation shall be attached to his/her proposal.

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003.16 CONSIDERATION OF PROPOSALS

003.16A Following the bid opening, the Department will compare the responsive proposals. Unless otherwise defined in the Proposal, the comparison will be based on the summation of the quantities and the unit bid prices shown in the Bid Schedule. The comparison will be available to the public after one working day.

003.16B The right is reserved to reject any and all proposals and to waive technical errors as may be deemed in the Department's best interest.

003.16C The Department may consider both tied and untied bids to determine the lowest responsible bidder when entire projects have been tied at the option of the Contractor. When untied bids are not received on all tied projects, the Department may award the contract to a Contractor submitting the lowest tied bid, regardless of whether an untied bid on a single project is lower than the tied bid. The Department will act in the best interest of the State when making this determination.

003.16D The right is reserved to require from any or all bidders on any project, including the apparent low bidder, prior to award of the Contract, all documents and information used in the preparation of their bids. Failure to furnish the documents and information shall result in a period of disqualification that is determined by the Engineer.

003.17 AWARD OF CONTRACT

The award of the contract will be made in Lincoln, Nebraska, by the Engineer to the lowest responsible bidder whose proposal complies with all the requirements prescribed. The award will not be made until all necessary investigations have been made into the responsibility of the bidder to whom it is proposed to award the contract; but, in any case, the award shall be made within thirty days after the opening of the proposals. The right is reserved to limit the work awarded one Contractor to the amount that he/she is considered capable of handling, taking into account both his/her capacity to perform work and contracts in force. The successful bidder will be notified by letter, mailed to the address shown on his/her proposal, that his/her bid has been accepted and that he/she has been awarded the contract.

003.18 CANCELLATION OF AWARD

The Department reserves the right to cancel the award of any contract anytime before the execution of the said contract by all parties without any liability against the Department.

003.19 REQUIREMENTS WITH RESPECT TO CONTRACT BOND

The bidder to whom the Contract is awarded shall furnish within thirty days after the award a Contract bond in a sum equal to the full amount of the Contract. The Contract bond must be executed on the form furnished

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by the Department of Roads. Contract bonds must be executed by corporations authorized to contract as a surety in Nebraska.

003.20 EXECUTION OF CONTRACT

The Contract shall be signed by the successful bidder and returned, together with a satisfactory bond, within thirty days from the date of award. The Department will not execute a contract until after satisfactory bonds, certificate of insurance, and other required documents have been received. No proposal shall be considered binding upon the Department until the execution of the Contract.

003.21 FAILURE TO EXECUTE CONTRACT

003.21A A contract is not executed if the Contractor:

003.21A1 Fails to file an acceptable performance bond within 30 days from the date of award.

003.21A2 Fails to complete and submit all required forms and documents within 14 days after the opening of bids.

003.21A3 Gives written notice expressing an intent not to execute the Contract.

003.21B When a contract is not properly executed, the Department may:

003.21B1 Annul the award and cancel the bid with forfeiture of the proposal guaranty (forfeiture not imposed as a penalty, but in liquidation of damages sustained).

003.21B2 Proceed with the execution of the Contract after the 30 day period when all required documents have been correctly submitted and adjust the bidder's prequalification rating downward as specified in Section 002.02B.

003.21B3 Award to the lowest, succeeding, responsive bidder and recover the differences from the defaulting Contractor.

003.22 SPECIAL ARRANGEMENTS

The right is reserved, unless otherwise stated in the proposal, to consider bids and award separate contracts for each group of items as shown in the proposal. All awards under the *Standard Specifications* are subject to the approval of the Department before becoming effective as contracts.

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003.23 AFFIRMATIVE ACTION

The State Highway Department, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and the Regulations of the Department of Transportation (49 CFR, Part 21), issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that the Contract entered into will be awarded to the lowest responsible bidder without discrimination on the grounds of race, color, sex, or national origin.

003.24 MATERIAL GUARANTY

Before any contract is awarded, the successful bidder may be requested to furnish a complete statement of the origin, composition, and manufacture of any materials to be used in the construction of the work, together with samples which may be subjected to the tests provided for in the *Standard Specifications to determine their quality and fitness for the work.*

ANNOTATION

Title 409
Chapter 2
Section 003

Enabling Legislation
39-102 and 39-1351
and 39-1353
Neb. Rev. Stat.

APPROVED
DON STENBERG
ATTORNEY GENERAL
BY *[Signature]*
Assistant Attorney General
DATE AUG 5 '98

FILED

JAN 2 1997

[Signature]
Secretary of State

APPROVED

JAN 2 1997
[Signature]
E. BENJAMIN NELSON
GOVERNOR